

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RANDEL SMICKLE,

Petitioner,

-against-

THE PEOPLE OF THE STATE OF NEW
YORK,

Respondent.

23-CV-2650 (LTS)

23-CV-1634 (JHR)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

On February 24, 2023, Petitioner Randel Smickle filed a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254 to challenge his January 5, 2017, New York County judgment of conviction. The Clerk of Court assigned docket number 23-CV-1634 to that filing, and the petition is pending before the Honorable Jennifer H. Rearden of this court. *See Smickle v. Sup't, Shawangunk Corr. Fac.*, ECF 1:23-CV-1634, 1. Approximately one month later, on March 29, 2023, Petitioner filed an identical petition with a letter requesting that the petition be held in abeyance, and that petition was opened as a new civil action. *See Smickle v. The People of the State of New York*, No. 23-CV-2650, 1.¹

Because Petitioner's February 24, 2023, and March 29, 2023, filings seek to challenge the same conviction, the Court directs the Clerk of Court to: (1) administratively close the action under docket number 23-CV-2650 (LTS); and (2) file the § 2254 petition, which is currently

¹ By order dated April 3, 2023, the Court issued an order directing Petitioner to either pay the \$5.00 fee or submit a completed and signed *in forma pauperis* ("IFP") application. (ECF No. 2.) In that order, the Court acknowledged the petition pending before Judge Rearden, challenging the same conviction, and advised Petitioner that if he intended this submission to be filed in the case before Judge Rearden to file a letter informing the court of his intention, rather than paying the filing fee or submitting the IFP application. (*Id.*) On April 21, 2023, Petitioner submitted a completed and signed IFP application. (ECF No. 3.)

docketed as ECF No. 1 in the action under docket number 23-CV-2650 (LTS), as an amended petition in the action under docket number 23-CV-1634 (JHR). Thereafter, the claims asserted in Petitioner's petition will proceed under docket number 23-CV-1634 (JHR), and Petitioner is directed to include docket number 23-CV-1634 (JHR) on all papers that he submits in support of his petition.

CONCLUSION

The Clerk of Court is directed to: (1) administratively close the action under docket number 23-CV-2650 (LTS); and (2) file the § 2254 petition, which is currently docketed as ECF No. 1 in the action under docket number 23-CV-2650 (LTS), as an amended petition in the action under docket number 23-CV-1634 (JHR).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: April 26, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge